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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,330	08/13/2001	Shane Robert McGill	978-53	7091
23117	7590	08/22/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			STULII, VERA	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 08/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,330

Applicant(s)

MCGILL, SHANE ROBERT

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/17/06
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 83-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 83-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/08/04, 04/19/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 83, 89 and 90 is rejected under 35 U.S.C. 102(e) as being anticipated by Takeoka et al. (US 5,935,480).

In regard to claim 83, Takeoka et al. (US 5,935,480) disclose a method of blending a food product (Col.22 lines 32-36) in a container having a closure member (Col.2, lines 8-10) and a blending element within a container (Col. 1 lines 65-67).

Method disclosed by Takeoka et al. includes the steps of:

- charging the container with food product at a charging location (Col.3, lines 29-30);
- fitting the closure member to the top of the container (Col.3, lines 29-30);
- locating the container with food product in a blending location (Col.3, lines 35-36);
- subjecting the food product to microwave energy to heat the product (Col.3, lines 37-38);

-blending the food product in the container at blending location within the microwave enclosure (Col.3, lines 38-43);

-dispensing blended food product from the container (Abstract);

In regard to all apparatus recitation found in paragraphs 5-7 of claim 83, it is not seen how these structural limitations further define the method. In any case, the structural limitations recited in those paragraphs are essentially disclosed by Takeoka et al. As evidenced by Takeoka et al. these structural details are seen to have been conventional. For example, Takeoka et al. teach the blending location is provided with a combined heating and blending apparatus (abstract; Col.2, lines 32-36). Takeoka et al. teaches a microwave having a seat for the container (Col.6, lines 47-49) including an upwardly extending drive member (Col.7, lines 31-33). Takeoka et al. teach the blending element in the container is located in operative engagement with the drive member (Col.7, lines 36-39). Takeoka et al. teach the drive member is operatively coupled to a drive motor (Col.7, lines 45-46). Takeoka et al. teach the container positioned on the seat within the microwave enclosure with the blending element in operative engagement with said drive member (Col.7, lines 36-45).

In regard to claim 89, Takeoka et al. discloses container of generally circular section over a body tapering from a lower end or base outwards towards an upper end (Fig. 1A, Fig. 1B, Fig.2).

In regard to claim 90, Takeoka et al. disclose the container is stackable with container of the same kind and configuration, one inside another (Fig. 1A, Fig. 1B, Fig.2). In regard to claim 91, Takeoka et al. disclose the upper end of the body of the container is

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open and has an outwardly directed lip arranged to cooperate with the closure member, when assembled (Fig. 1A, Fig. 1B, Fig.2, Fig.3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 84-88 and 91-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeoka et al. (US 5,935,480) in view of Wade et al. (US 4,828,866) and Hochstein et al. (US 6,071,006).

Takeoka et al. (US 5,935,480) do not disclose
cooling charged and sealed container to a storage temperature,
removing container with food product from cooled storage prior to locating at
blending location,

refrigerating charged and sealed container to freezing temperature,
transporting frozen product to blending/ heating location,
using disposable container and blending element,
accessing blending product in the container through the closure member,
employing milkshake as a food product subjected to blending/heating.

Wade et al. (US 4,828,866) disclose fruit shake that may be distributed and stored in frozen state, and subsequently placed in microwave oven for thawing purposes (Col.1, lines 52-55). Wade et al. teach providing a fruit shake product which may be packaged in individual containers having a single serving (Col.1,lines 65-66).

Hochstein et al. (US 6,071,006) disclose a container for delivering a beverage to be mixed. Hochstein et al. teach container comprising a cover hermetically sealed to the lip of a container, a stirring shaft that extends between a bottom and top end, plurality of mixing blades, driving connection or coupling for receiving a rotating device for rotating the stirring shaft and the mixing blades for mixing the contents of the container (Abstract). Hochstein et al. disclose facilitating the stacking of containers (Abstract). Hochstein et al. teach the container with frozen contents is dispensed from a machine and engaged by a rotating device to rotate the blades to mix the contents, such as a milkshake (Abstract). Hochstein et al. also discloses refrigerating (cooling) charged and sealed container to freezing (storage) temperature (Col.3, lines 66-67), removing container with food product from cooled storage prior to locating at blending location and transporting frozen product to blending/ heating location (Col.4, lines 1-4), using disposable container and blending element (Abstract), accessing blending product

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in the container through the closure member (Col.4, lines 14-16). Hochstein et al. also discloses milkshake as a product contained in the container (Abstract).

It would have been obvious to modify invention of Takeoka et al. and to add the following steps in his method of blending food product:

- cooling (refrigerating) charged and sealed container to a storage (freezing) temperature in order for the food product (milkshake) to be stored prior to the point of blending,

- removing container with food product from cooled storage prior to locating at blending location as taught by Hochstein et al. since frozen beverages are commonly prepared at the point of sale on demand basis,

- transporting frozen product to blending/ heating location as taught by Hochstein et al since the freezing location and blending location are distinct,

- using disposable container and blending element as taught by Hochstein et al for sanitary purposes,

- accessing blending product in the container through the closure member for the convenience purposes as taught by Hochstein et al,

- employing milkshake as a food product subjected to blending/heating as taught by Hochstein et al. and Wade et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Boulard (US 4,751,357) discloses microwave oven with moving equipment. Astegno et al. (US 6,193,181) discloses electrical household appliance for cooking preparation. Porter (GB 2,159,027) discloses improvements in microwave ovens. Schulze (DE 3,930,337) discloses boosting microwave effect on flowing material. Levinson (US 5,925,394) teaches methods for denaturing and whipping into a foam protein certain denaturable proteins. Boulard (US 4,937,418) discloses microwave oven fitted with a wave spreader.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

v. Stulic

08/18/06

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PRIMARY EXAMINER
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